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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF CITY OF MIDLAND

These Comments are filed by City of Midland in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Midland believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of Midland is a municipality with a population of 101,033. Our franchised cable providers are Cox Com, Inc. and Clearsource, Inc. (Grande Communications). Our community has negotiated cable franchises since 1977.

Our Current Franchises

Our current franchise with Cox began on March 17, 2000, and expires 15 years from the effective date. Our current franchise with Grande began on March 7, 2000,

and expires 15 years from the effective date. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in

which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchises require the cable operators to pay a franchise fee to the City of Midland in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operators to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel (or capacity) devoted to government access.

Our franchises contain the following institutional network ("I-Net") requirements: one channel available for training purposes. We use our I-Net facilities at fire substations for remote training.

Our franchises contain the following requirements regarding emergency alerts: "In the case of any emergency or disaster, the Grantee shall, upon request of the City, make available its facilities for the City to provide emergency information and instructions during the emergency or disaster period. The City shall hold Grantee harmless from any and all liability or claims arising from the City's use of Grantee's facilities. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency."

Our franchises contain the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. "Grantee shall maintain and operate a business office for the purpose of receiving all inquiries, including without limitation, those regarding service, installation appointments, equipment malfunctions and billing and/or collection issues."

"The business office shall be open for both telephone and walk-in business Monday through Friday during the term of this Ordinance, except on legal holidays. The business office shall maintain a staff adequate to process inquiries, requests for installation, service or repairs and other business in a timely and efficient manner. The business office shall have a publicly listed local telephone number. Grantee shall establish a telephone answering service, during non-business hours and throughout the term of this Ordinance, to answer questions about service calls, service outages and provide proper referral regarding billing and other subscriber information. All calls received by said answering service shall be forwarded to Grantee the next business morning. Grantee shall make its best efforts to call back subscribers on such next morning, if requested to do so by a subscriber. Regarding all other calls to said answering service, Grantee shall respond appropriately in compliance with all applicable terms and conditions contained in this Franchise. Grantee shall respond to all requests for service that are received during regular business hours on a first-come, first-served basis Monday through Friday. Such requests shall be handled on a same-

day basis, if possible, but in all instances, requests for service calls shall be responded to within three (3) business days, unless the parties mutually agree upon a later date; provided, however, that in cases of individual subscriber outages, Grantee shall respond within two (2) business days, unless the parties mutually agree upon a later date.”

“Grantee shall provide an answering service for service calls taken after normal business hours, Saturdays, Sundays and holidays.”

“Calls for repair service received Saturdays, Sundays and holidays shall be scheduled by service technicians according to normal repair service policies, on a first-come, first-served basis. Grantee shall ensure that there are standby technicians on call at all times after normal business hours. The answering service shall be required to notify the standby technician(s) of an unusual number of calls or a number of similar complaint calls coming from the same area. For purposes of this Section, an unusual number of calls shall be deemed to mean five (5) or more from the same area.”

“System outages shall be responded to immediately, twenty-four (24) hours a day by technical personnel.”

Our franchises require that the cable operator currently provide service to the following areas of our community: “Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least forty (40) subscribers within one (1) cable-bearing strand mile of its aerial trunk or distribution plant, or fifty (50) subscribers within one (1) cable-bearing strand mile of its underground trunk or distribution plant, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition or market development of the Cable System. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber’s request to locate his cable drop underground, where utilities are aerial, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscriber, or a density of less than forty (40) subscribers per one (1) mile of cable-bearing strand of aerial trunk or distribution plant, or fifty (50) subscribers per one (1) mile of cable bearing strand of underground plant, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile multiplied by a fraction whose numerator equals the actual number of potential Subscribers per one (1) cable-bearing strand mile of its trunk or distribution cable, and whose denominator equals forty (40) subscribers for aerial plant and fifty (50) subscribers for underground plant. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis.

Grantee may require that the payment of the capital contribution in aid of construction borne of such potential Subscribers be paid in advance.”

Our franchises contain a "most-favored-nations" provision which states the following: “In the event the City enters into a franchise, permit, license, authorization or other agreement of any kind with any other Person or entity other than the Grantee for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Service Area, which contains terms more favorable to such Person or entity in any regard, then this Ordinance shall be deemed amended as of the effective date of the other franchise, permit, license, authorization or other agreement, so as to give the Grantee the benefit of any such more favorable terms.”

“In the event Grantee agrees to pay a franchise fee to any City in the State of Texas at a rate higher than provided in this franchise and such higher rate is legal under the Cable Act and any other applicable law, the City may require such higher payment upon one hundred twenty (120) day written notice to Grantee provided the City also requires all other grantees for Cable Service by the City to also pay a franchise fee at the same higher rate.”

Our franchises contain the following insurance and bonding requirements: “The Grantee shall maintain, and by its acceptance of this Franchise, specifically agrees that it will maintain throughout the term of this Franchise liability insurance insuring the City and the Grantee with regard to all damages in the amounts of: \$1,000,000.00 for bodily injury or death to any one person, within the limit, however, of \$1,000,000.00 for bodily injury, death or property damages resulting from any one accident. Said insurance shall designate the City as an additional named insured. Such insurance shall be non-cancelable except upon thirty (30) days prior written notice to the City. Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The City acknowledges that the legal, financial and technical qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Grantee and City recognize that the costs associated with bonds and other surety may ultimately be borne by the subscribers in the form of increased rates for Cable Services. In order to minimize such costs, the City agrees to require bonds and other surety only in such amounts and during such times, as there is a reasonably demonstrated need therefore. The City agrees that in no event, however, shall it require a bond, letter of credit, or other related surety in an aggregate amount greater than \$100,000.00 conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that one is required in the future, the City agrees to give Grantee at least sixty (60) days prior notice thereof stating the exact reason for the requirement.”

The cable franchises grant the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart

from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. “All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be so located as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways. If during the course of Grantee’s construction, operation or maintenance of the Cable System there occurs a disturbance of any Public Way by Grantee, Grantee shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.”

The franchise agreements provide for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: “Subject to applicable federal and State law, in the event the City, after such meeting, determines that Grantee is in default of any provision of the Franchise, the City may:

Foreclose on all or any part of any security provided under its Franchise, if any, including, without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the City reasonably determines is necessary to remedy the default.

Commence an action at law for monetary damages or seek other equitable relief.

In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or

Seek specific performance of any provisions, which reasonably lends itself to such remedy, as an alternative to damages.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance.”

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: The City of Midland will require three readings of a new franchise agreement. This will provide for public notice and input in the process.

Competitive Cable Systems

- Our community granted a competitive franchise to Clearsource (Grande Communications) and that provider is currently providing service in my community today. Their franchise agreements are similar in design.

In general, the City of Midland has a long-standing relationship and agreement with Cox. With Grande Communications coming into the market in the last five years, our relations with both corporations have strengthened. Grande was more than willing to agree to the terms, promptly provided the government access channel, and have been willing to update equipment on their end to provide services such as emergency notification, etc. Grande has plans to provide service to a greater portion of the city as they further build out. The City of Midland has found that once Grande offered a service to the city, Cox quickly stepped up. The competition has worked to the favor of the city as well as the customers the cable operators serve.

Conclusions

The local cable franchising process functions well in the City of Midland. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local

needs. These factors are equally present for new entrants as for existing users.

The City of Midland therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Rick Menchaca". The signature is fluid and cursive, with the first name "Rick" being more prominent than the last name "Menchaca".

Rick Menchaca
City Manager/City of Midland

cc: NATOA, info@natoa.org
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